

HONORABLE MARSHA J. PECHMAN

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JO ELLEN PETERS and KEN LANE, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

vs.

AMAZON SERVICES LLC,

Defendant.

NO. 2:13-cv-00480-MJP

**FIRST AMENDED CLASS  
ACTION COMPLAINT FOR:**

- (1) **BREACH OF CONTRACT**
- (2) **CONSUMER PROTECTION ACT**
- (3) **BREACH OF FIDUCIARY DUTY**
- (4) **DECLARATORY RELIEF**
- (5) **UNJUST ENRICHMENT**

**JURY DEMAND**

PLAINTIFFS JO ELLEN PETERS and KEN LANE bring this class action on behalf of themselves and all others similarly situated against DEFENDANT AMAZON SERVICES LLC (“Defendant” or “Amazon”) and state as follows:

**PARTIES**

1. Plaintiff Jo Ellen Peters (“Plaintiff Peters”) is and at all times herein mentioned was a resident of the County of Fayette, State of Kentucky.

2. Plaintiff Ken Lane (“Plaintiff Lane”) is and at all times herein mentioned was a resident of the County of Travis, State of Texas.

3. Plaintiffs are informed and believe and thereon allege Defendant Amazon is a Nevada limited liability company, with its principal place of business located at 410 Terry Avenue North, Seattle, Washington. Defendant Amazon may be served through its registered agent, Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington, 98501.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over these claims under the provisions of the Class Action Fairness Act, 28 U.S.C. § 1332(d). While it is anticipated that no individual Plaintiff or Class member's claim exceeds \$75,000, the aggregate amount in controversy for the Class exceeds \$5 million exclusive of interest and costs, and Plaintiffs are citizens of different states from the Defendant. Personal jurisdiction is proper as Amazon is domiciled in Washington and has purposefully availed itself of the privilege of conducting business activities within the State of Washington.

5. Venue in the Western District of Washington is proper under 28 U.S.C. § 1391(b)(1) and (2) because it is the district in which the Defendant resides, and it is the locale where a substantial part of the events or omissions giving rise to the claim occurred.

6. As an additional basis for venue, Amazon's Participation Agreement contains a forum selection clause setting venue in King County, Washington federal court.<sup>1</sup> Accordingly, venue is proper under 28 U.S.C. § 1391.

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<sup>1</sup> See Amazon Participation Agreement at ¶ 18 (emphasis added) (<http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=1161302>):

**Applicable Law.** The laws of the state of Washington govern this Participation Agreement and all of its terms and conditions, without giving effect to any principles of conflicts of laws or the Convention on Contracts for the International Sale of Goods. Any dispute with Amazon or its affiliates relating in any way to these terms and conditions or your use of the Services in which the aggregate total claim for relief sought on behalf of one or more parties exceeds \$7,500 shall be adjudicated in any state or federal court in King County, Washington, and you consent to exclusive jurisdiction and venue in such courts.

### **APPLICABLE LAW**

7. Although this is a nationwide class action, the Amazon Participation Agreement calls for the application of Washington state law, “without giving effect to any principles of conflicts of laws or the Convention on Contracts for the International Sale of Goods.”<sup>2</sup>

### **NATURE OF ACTION**

8. Plaintiffs bring this class action against Defendant to recover damages and other relief available at law and in equity on behalf of themselves, as well as on behalf of the members of the classes defined herein, and to remedy Defendant’s inequitable and unconscionable conduct detailed herein.

9. Plaintiffs and the Class are “sellers” of products using Defendant’s website, Amazon.Com. In order to become a “seller,” Plaintiffs and the Class must acquiesce to the terms set forth in Amazon’s Participation Agreement (attached as Exhibit A hereto). Despite being a fiduciary and/or agent holding funds in trust in regard to the collection of payments from “buyers,” Defendant routinely holds payments for longer than permitted by its own Participation Agreement, and for longer than permitted by Washington law, before remitting the seller’s portion of funds to the seller. In fact, the Participation Agreement, which Amazon holds out as providing the terms for payment, states a date for the transmission of payments that exceeds the time limit established by Washington law.

10. Moreover, on a routine basis, Defendant suspends, reviews, or cancels accounts, and places holds on sellers’ funds. While Amazon contends to have the right under the Participation Agreement, in some instances, for holding the funds for 90 days, Amazon routinely holds funds beyond the contractual period set forth in the Participation Agreement. Funds are routinely held well over 90 days.

11. Amazon’s actions are all the more unreasonable in light of the fact it is attempting to invoke a contract term contained in the Participation Agreement, which is a

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<sup>2</sup> *Id.*

1 classic contract of adhesion. The language upon which Amazon relies is contained in a form  
2 contract, viewed online, that is provided on a “take it or leave it” basis. There is a tremendous  
3 disparity in bargaining power, as a member of the Class must be able to accept payment *via*  
4 Amazon in order to sell goods on the Amazon.com website.

5 12. The amounts of money Amazon holds in excess of the time allowed by law, and  
6 in breach of the Participation Agreement, range from a few dollars to thousands of dollars. All  
7 the while, Amazon keeps the interest and other gains generated on the funds owed to Plaintiffs  
8 and the Class. Amazon utilizes the Plaintiffs’ and the Class’s available cash, and gains earned  
9 thereon, in its business. The scale of Amazon’s practice makes it lucrative. Amazon.com, Inc.  
10 reportedly generated over \$20 billion in third-party sales on its website in the fourth quarter of  
11 2012 alone. On information and belief, the annual volume of third-party sales in 2012 equaled  
12 or exceeded Amazon.com, Inc.’s own sales of over \$60 billion, averaging over \$160 million in  
13 third-party sales *per day, every day*. By holding on to this daily cash flow for only a few days  
14 or weeks, Amazon is able to invest this money in money market funds, marketable securities  
15 and other investments, and utilize the cash as working capital in the operation of its business.  
16 On information and belief, Amazon has reaped and continues to reap many tens of millions of  
17 dollars annually from this practice.

18 13. Plaintiffs and members of the Class, the weaker parties, have their funds held in  
19 accounts over which Amazon has control, and Amazon asserts it has unchecked ability to seize  
20 the funds in those accounts. While Amazon states that the funds are still the sellers’ funds,  
21 when those funds are in the custody or control of Amazon it has fiduciary obligations that  
22 require it to act in the interests of Plaintiffs and the Class. Moreover, it has a contractual  
23 obligation pursuant to the Participation Agreement with which it must comply. Amazon has  
24 failed to so comply.

**FACTUAL BACKGROUND**

14. Amazon solicits merchants (sellers) to make products and inventory available on the Amazon.com website, touting that it “has the eCommerce experience people expect and trust. Put them together with Selling on Amazon and benefit from increased exposure and traffic which can help drive your business’s bottom line.”<sup>3</sup>

15. All sellers must agree to be bound by the terms of the Participation Agreement. All payments for sales made through the Amazon.com website are handled exclusively by Amazon. The Amazon Participation Agreement states that “IN ORDER TO SELL ITEMS IN MARKETPLACE, YOU MUST REGISTER WITH AMAZON AND USE THE AMAZON PAYMENT SERVICE (the “Payment Service”).”<sup>4</sup> The Participation Agreement goes on to explain the terms of the Payment Services. For example, the buyers must pay by means of an “authorized credit card payment.”<sup>5</sup>

16. Upon information and belief, Amazon or an affiliate company processes its own credit card sales; in other words, Amazon does not use a third-party payment processor. As both processor and merchant, it pays no processing fees and there is no middle man.

17. Upon information and belief, when a buyer purchases an item on Amazon.com, Amazon obtains an “authorization” on the credit card that guarantees payment for a period of time, but Amazon does not actually “capture” the funds until it receives word from the seller that it has shipped the item purchased. The credit card processing business operates 24/7. Upon information and belief, once the money is captured, Amazon actually receives the buyer’s money within a few hours, but in no more than 24 hours, and this is the case seven days a week (not just on banking days).

<sup>3</sup> See <http://www.amazon.com/gp/seller-account/mm-summary-page.html>.

<sup>4</sup> See Amazon Participation Agreement at ¶ 5.

<sup>5</sup> *Id.* at ¶ 5(a).

18. In providing the Participation Agreement's Payment Service to sellers such as Plaintiffs and the Class, Amazon engages in money transmission. "Money transmission" means:

[R]eceiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" does not include the provision solely of connection services to the internet, telecommunications services, or network access.

RCW 19.230.10(18). Because it engages in money transmission Amazon is a "money transmitter" as defined by the UMSA (RCW 19.230.10(19), and its conduct is governed by the Washington Uniform Money Services Act, Chapter 19.230 *et seq.* RCW ("UMSA").

19. Acknowledging that it is a "money transmitter," in accordance with the registration requirements of the UMSA, Amazon sought and obtained the necessary "money transmitter" license. Amazon's registration number is #550-MT-29160.<sup>6</sup> Pursuant to the UMSA,

(1) Every money transmitter licensee and its authorized delegates **shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money** or equivalent value, unless otherwise ordered by the customer or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money. For purposes of this subsection, money is considered to have been transmitted when it is available to the person designated by the customer and a reasonable effort has been made to inform this designated person that the money is available, whether or not the designated person has taken possession of the money. As used in this subsection, "monetary equivalent," when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated

<sup>6</sup> <https://payments.amazon.com/sdui/sdui/about?nodeId=6026>. Amazon has also registered in numerous other states requiring the registration of money transmitters. *Id.*

recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction.

RCW 19.230.330. (Emphasis added).

20. In its capacity as a money transmitter, and in order to carry out the terms of the Participation Agreement, Amazon collects payments from buyers, and then remits payments to sellers. Upon information and belief, Amazon routinely fails to transmit payments in accordance with either the maximum 10 business-day period set forth in RCW 19.230.10(18) or with Amazon's own stated policies regarding payment transmission contained in the Participation Agreement. The experiences of Plaintiffs, described below, are, upon information and belief, representative of Amazon's disregard of the law and its own contractual obligations set forth in the Participation Agreement.

21. Amazon assumes no role whatsoever in any disputes between sellers and buyers. In the Participation Agreement, Amazon makes clear that it "will not act as either party's agent in connection with resolving any disputes between [buyers and sellers] related to or arising out of any transaction." Amazon further "urges Sellers and Buyers to cooperate with each other to resolve such disputes." Also, Amazon has inserted a purported "general release" of any claims by and between sellers and buyers. Thus, any contention by Amazon that the reason it holds and uses money belonging to sellers is to protect buyers of products on the Amazon.com website is disingenuous.

### **ALLEGATIONS OF THE CLASS REPRESENTATIVES**

#### **A. Plaintiff Peters**

22. Plaintiff Jo Ellen Peters became an Amazon "seller" subject to the Participation Agreement in October, 2012. She marketed, sold, and shipped hard to find DVDs listed for sale on the Amazon.com website. Her first sale occurred on or about October 15, 2012, and she notified Amazon that the DVD shipped on October 15, 2012. Pursuant to the Participation

1 Agreement, she should have received her funds from Amazon within 14 days, on October 29,  
 2 2012, and pursuant to the UMSA, the buyer's money should have been transmitted to Plaintiff  
 3 Peters within 10 business days (October 29, 2012). Instead, Amazon did not initiate  
 4 instructions to transmit Plaintiff Peters' money to her until November 5, 2012, and the money  
 5 did not get deposited into her bank account (become available to her) for at least a day or two  
 6 after that. Amazon failed to timely transmit money to Peters from other sales as well.

7 23. On November 7, 2012, Amazon notified Plaintiff Peters by email that it had  
 8 suspended her seller account. At that time, Plaintiff Peters had already shipped several items  
 9 sold on the Amazon.com website, and Amazon was in possession of the money received from  
 10 the sales. Plaintiff Peters followed Amazon's policy and filed a written appeal of the  
 11 suspension by email on November 8, 2012. Just one day later, on November 9, 2012, Amazon  
 12 notified Plaintiff Peters by email that Amazon had completed its review and investigation of the  
 13 suspended account, and that its decision to close the account permanently was final. Contrary  
 14 to the terms of the Participation Agreement, and in violation of the UMSA, Amazon continued  
 15 to retain Plaintiff Peters' money for 98 days from the date the account was first suspended.<sup>7</sup>

#### 16 **B. Plaintiff Lane**

17 24. Plaintiff Ken Lane first became an Amazon "seller" subject to the Participation  
 18 Agreement in or about January 2010. Over the next 29 months or so he marketed, sold, and  
 19 shipped flight training materials, aviation maintenance training materials, pilot supplies and  
 20 aircraft supplies that were listed for sale on the Amazon.com website. After items were sold  
 21 and shipped, Amazon routinely held Lane's money longer than the 14 days specified in the  
 22 Participation Agreement and failed to transmit to him his money within 10 business days as  
 23 required by the UMSA.

24 25. On May 29, 2012, Amazon notified Plaintiff Lane by email that it had  
 25 suspended his seller account. At that time, Plaintiff Lane had already shipped several items

26 <sup>7</sup> Authorization for payment was "initiated" by Amazon on February 11, 2013, but funds were not  
 27 actually made available to Plaintiff Peters until February 13, 2013.



1 that he had sold on the Amazon.com website, and Amazon was already in possession of the  
 2 money received from the buyers. Plaintiff Lane filed a written appeal of the suspension by  
 3 email on the same day. Soon thereafter, on or about June 1, 2012, Amazon notified Plaintiff  
 4 Lane by email that it had completed its review and investigation of the suspended account, and  
 5 that its decision to close the account permanently was final. Despite the terms of the  
 6 Participation Agreement, and in violation of the UMSA, Amazon has retained Plaintiff Lane's  
 7 money. As of the date this Complaint was filed, Amazon still has not transmitted to Plaintiff  
 8 Lane the money that is in Amazon's possession.

### 9 CLASS ACTION ALLEGATIONS

10 26. Plaintiffs bring each Claim for Relief alleged herein pursuant to FED. R. CIV. P.  
 11 23 on behalf of themselves and a Class defined as follows:

#### 12 The Class

13 All persons or entities in the U.S. (i) who opened a seller account  
 14 with Amazon and (ii) for whom Amazon has received Payment  
 15 Transaction funds for at least one item purchased by at least one  
 16 buyer on the Amazon.com website since March 15, 2009.

17 Excluded from the Class are (i) any Amazon seller who received  
 18 written notice from Amazon that their account was reviewed,  
 19 suspended, or closed for the stated reason that Amazon had  
 20 reason to believe a crime occurred or would occur as a result of  
 21 transmitting money to the seller; (ii) any entity in which Amazon  
 22 has a controlling interest or which has a controlling interest in  
 23 Amazon, or any affiliate of Amazon, and their legal  
 24 representatives, predecessors, successors, assigns, and  
 25 employees; (iii) any person who, through private settlement,  
 26 arbitration, or judgment has released the claims made herein; (iv)  
 27 any person who through a bankruptcy proceeding has had their  
 claim or potential claim released; and (v) the judge and staff to  
 whom this case is assigned, and any member of the judge's  
 immediate family.

#### 25 The Subclass

26 As a subclass of persons within the Class as defined above, all  
 27 persons or entities in the U.S. (1) who were provided written

notice from Amazon that the account had been suspended; (2) who, at the time of such written notice, had funds on account with Amazon; and (3) Amazon did not transmit such funds to the seller by the shorter of (a) 90 days following the initial date the account was suspended by Amazon, or (b) the date on which the seller was provided written notification that Amazon's review was complete and the decision to close the account was final.

Excluded from the Class are (i) any Amazon seller who received written notice from Amazon that their account was reviewed, suspended, or closed for the stated reason that Amazon had reason to believe a crime occurred or would occur as a result of transmitting money to the seller; (ii) any entity in which Amazon has a controlling interest or which has a controlling interest in Amazon, or any affiliate of Amazon, and their legal representatives, predecessors, successors, assigns, and employees; (iii) any person who, through private settlement, arbitration, or judgment has released the claims made herein; (iv) any person who through a bankruptcy proceeding has had their claim or potential claim released; and (v) the judge and staff to whom this case is assigned, and any member of the judge's immediate family.

27. As set forth below, the proposed Class satisfies the requirements for a class action.

28. The definition of the Class is clear, and members of the Class are easily identifiable on the basis of objective information, as Amazon maintains information regarding all persons and/or entities who are or were registered sellers subject to the Participation Agreement, and maintains information relating to all payments accepted on behalf of sellers and then forwarded to sellers. Plaintiffs are members of the Class that they seek to represent, as detailed in the factual information section, ¶¶ 22-25.

29. Class members can be identified using information kept by Amazon in the usual course of business and/or in the control of Amazon. Class members can be notified of the pendency of the class action through direct mailings to address lists maintained in the usual course of business by Amazon, through email, which is the primary means of communication utilized by Amazon, and, if necessary, by publication.

1           30.     Class members are so numerous that individual joinder is impracticable. The  
 2 precise number of Class members is unknown to Plaintiffs, but it is clear that the number  
 3 greatly exceeds the number for which joinder would be practicable, and likely exceeds 100,000  
 4 persons.

5           31.     Common questions of law and fact predominate over the questions affecting  
 6 only individual class members. Some of the common legal and factual questions include:

7                   a.     Whether Amazon has violated Washington's Consumer Protection Act  
 8 by engaging in unfair or deceptive business acts or practices;

9                   b.     Whether Amazon failed to transmit monies owed to the Class within 10  
 10 business days as required by UMSA;

11                  c.     Whether Amazon has breached the terms of the Participation Agreement;

12                  d.     Whether Amazon breached its Participation Agreement with members of  
 13 the Subclass by failing to transmit monies owed to them by the shorter of: (i) 90 days following  
 14 the initial date each Subclass member's accounts was suspended by Amazon, or (ii) the date on  
 15 which the Subclass member was provided written notification that Amazon's review was  
 16 complete and the decision to close the account was final;

17                  e.     Whether Amazon breached its Participation Agreement with members of  
 18 the Subclass by failing to transmit monies owed to them within 14 days of when Amazon  
 19 received such money;

20                  f.     Whether Amazon has received in the past and continues to receive  
 21 benefits in the form of interest, gains, free working capital and any other benefits by holding  
 22 illegally and failing to transmit timely all or a portion of the estimated \$60 billion in annual  
 23 third party sales by the Class (approximately \$160 million per day, every day) it handles as a  
 24 licensed money transmitter, and the total value of such benefits;

1                   g.       Whether Amazon has a special relationship with the Class and is a  
2 fiduciary of the Class as the agent holding funds belonging to the Class that is charged with the  
3 legal duty to transmit such funds to the Class;

4                   h.       Whether in equity or by virtue of its role as a fiduciary, Amazon owes  
5 the Class a full accounting;

6                   i.       Whether the Class is entitled to disgorgement of all benefits received by  
7 Amazon from its illegal conduct;

8                   j.       Whether Amazon has been unjustly enriched; and

9                   k.       The nature and extent of damages and other remedies to which the  
10 conduct of Amazon entitles the class members.

11           32.     Amazon engaged in a common course of conduct giving rise to the legal rights  
12 sought to be enforced by Class members. The same contract and statutory violations are  
13 involved. Individual questions, if any, pale by comparison to the numerous common questions  
14 that predominate.

15           33.     The injuries sustained by Class members flow, in each instance, from a common  
16 nucleus of operative facts. In each case, Amazon failed to pay the Class member in a timely  
17 manner.

18           34.     Class members have been damaged by Amazon's misconduct. Class members  
19 have not had accounts paid timely, and have been deprived of the use of their funds. Amazon,  
20 on the other hand, has retained the funds, used them in the operation of its business, and has  
21 retained all interest and other gains earned off the funds for the extended period the funds are in  
22 Amazon's possession or control.

23           35.     Plaintiffs' claims are typical of the claims of the other Class members.  
24 Plaintiffs, each of which are or were sellers on Amazon.com, had funds paid to them by buyers,  
25 and had those funds retained by Amazon for a period that exceeds the statutory maximum  
26 under the UMSA and/or the Participation Agreement contractual deadline. Amazon has  
27

1 continued to earn interest on those funds, while at the same time continuing to deprive  
2 Plaintiffs access to their funds and their account records.

3 36. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs  
4 are familiar with the basic facts underlying the Class members' claims. Plaintiffs' interests do  
5 not conflict with the interests of the other Class members that they seek to represent. Plaintiffs  
6 have retained counsel competent and experienced in class action litigation and intend to and  
7 will prosecute this action vigorously.

8 37. Plaintiffs' counsel have successfully prosecuted complex class actions,  
9 including consumer protection class actions. Plaintiffs and Plaintiffs' counsel will fairly and  
10 adequately protect the interests of the Class members.

11 38. The class action device is superior to other available means for the fair and  
12 efficient adjudication of the claims of Plaintiffs and the Class members. The relief sought per  
13 individual Class member is small given the burden and expense of individual prosecution of the  
14 potentially extensive litigation necessitated by Amazon's conduct. Furthermore, it would be  
15 virtually impossible for Class members to seek redress on an individual basis. Even if Class  
16 members themselves could afford such individual litigation, the court system could not.

17 39. Individual litigation of the legal and factual issues raised by Amazon's conduct  
18 would increase delay and expense to all parties and to the court system. The class action device  
19 presents far fewer management difficulties and provides the benefits of a single, uniform  
20 adjudication, economies of scale and comprehensive supervision by a single court.

21 40. Amazon has acted or refused to act on grounds that apply generally to the Class,  
22 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the  
23 Class as a whole.

**FIRST CLAIM FOR RELIEF****(Breach of Contract – On Behalf of the Class)**

41. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

42. In the Participation Agreement, Amazon claims to have the right to “initiate a credit to Seller’s Account on a rolling 14-day cycle.”<sup>8</sup> However, Amazon then claims the right to an additional five business days for the funds to actually be credited to the seller’s account. Even taking into account this liberally and unilaterally extended period for payment, Amazon routinely fails to credit sellers’ accounts timely.

43. Amazon routinely holds funds in excess of the time allotted by the Participation Agreement. Numerous articles, web posts, blogs, and other online sources reveal widespread complaints about Amazon’s practice of holding sellers’ funds. Numerous complaints have been filed with the Washington Attorney General’s Office about Amazon’s business practices and a substantial number of those complaints relate to lengthy and improper holds on seller funds by Amazon.

a. Plaintiff Peters, for example, had several hundred dollars held for 21 and 98 days; and

b. Plaintiff Lane, for example, had several hundred dollars held more than 14 days, and in some instances, well over 100 days.

Upon information and belief, the Class has suffered the same breach of contract.

44. To date, Amazon has simply ignored each of Plaintiffs’ entreaties for information regarding timely payment.

45. As a result of such breaches, Plaintiffs and the Class have been deprived of their funds.

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<sup>8</sup> See Amazon Participation Agreement at ¶ 5(e).

47. Plaintiffs and Class members have been and continue to be damaged by Amazon's breach of contract, and have suffered damages in an amount to be determined at trial. Plaintiffs and the Class are entitled to damages.

48. Plaintiffs and the Class are entitled to legal and equitable relief against Amazon, including damages, specific performance, rescission, an accounting, attorneys' fees, costs of suit, and other relief as appropriate.

48. Plaintiffs and the Class are entitled to legal and equitable relief against Amazon, including damages, specific performance, rescission, an accounting, attorneys' fees, costs of suit, and other relief as appropriate.

## SECOND CLAIM FOR RELIEF

**(Breach of Fiduciary Duty – On Behalf of the Class)**

49. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

50. Under the terms of the Participation Agreement, Amazon is the agent for payment for Plaintiffs and the Class. As an agent, Amazon owes a fiduciary duty to the Plaintiffs and the Class. Amazon acknowledges the existence of this special relationship in the Participation Agreement's discussion of payment processing:

You hereby appoint us as your payment processing agent for the limited purpose of receiving Payment Transaction funds on your behalf. ***Except as provided in the preceding sentence, Amazon is not the agent, fiduciary,*** trustee, or other representative of you.<sup>9</sup>

• • •

Because Amazon is not the agent of Seller *except for the limited purpose of processing payments* and is not the agent of Buyer for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.<sup>10</sup>

<sup>9</sup> See Amazon Participation Agreement at ¶ 22(b) (emphasis added).

<sup>10</sup> See Amazon Participation Agreement at ¶ 19 (emphasis added).

1           51. In the Participation Agreement, Amazon claims to have the right to “initiate a  
2 credit to Seller’s Account on a rolling 14-day cycle.”<sup>11</sup> However, Amazon then claims the right  
3 to an additional five business days for the funds to actually be credited to the seller’s account.  
4 Even taking into account this liberally and unilaterally extended period for payment, Amazon,  
5 as payment agent, routinely fails to credit sellers’ accounts timely. Amazon routinely holds  
6 funds in excess of the time allotted by the Participation Agreement.

7           a. Plaintiff Peters, for example, had several hundred dollars held for 21 and  
8 98 days; and

9           b. Plaintiff Lane, for example, had several hundred dollars held more than  
10 14 days, and in some instances, well over 100 days.

11           52. Such excessive holds are a violation of the fiduciary duty owed by Amazon to  
12 Plaintiffs and the Class. Even assuming that Amazon has the right to hold the funds for this  
13 length of time (in direct contravention of the requirements of the UMSA), Amazon routinely  
14 breaches its fiduciary duty by holding funds in excess of the “14 days + 5 business days” set  
15 forth in the Participation Agreement. Upon information and belief, the Class has suffered the  
16 same breach of fiduciary duty.

17           53. There is no legitimate basis by which Amazon, as agent, can hold funds longer  
18 than the period set forth in the Participation Agreement.

19           54. As a result of Amazon’s breaches, Plaintiffs and the Class have been deprived of  
20 their funds.

21           55. Plaintiffs, on behalf of themselves and the Class, have notified Amazon of the  
22 breach within a reasonable time.

23           56. Plaintiffs and the Class have been and continue to be damaged by Amazon’s  
24 breach of fiduciary duty, and have suffered damages in an amount to be determined at trial.  
25 Plaintiffs and the Class are entitled to damages.

26 \_\_\_\_\_  
27 <sup>11</sup> See Amazon Participation Agreement at ¶ 5(e).



57. Plaintiffs and the Class are entitled to legal and equitable relief against Amazon, including damages, specific performance, rescission, an accounting, attorneys' fees, costs of suit, and other relief as appropriate.

### THIRD CLAIM FOR RELIEF

**(Violation of the Washington Consumer Protection Act, RCW § 19.86 *et seq.* – Non-Per Se Deceptive Business Practices – On Behalf of the Class and the Subclass)**

58. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

59. Amazon is a “person” within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(1), and conducts “trade” and “commerce” within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(2).

60. Plaintiffs and other Class members are “persons” within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(1).

61. Amazon has engaged in deceptive acts or practices. Amazon has obtained a license to be a “money transmitter” subject to the UMSA, and thus expressly or impliedly represents that it will comply with the UMSA’s requirements, including the UMSA’s requirement that a money transmitter “transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money transfer.” RCW 19.230.330. Despite these representations, Amazon has engaged in a pattern and practice of failing to transfer money to the “person[s] designated by the customer,” including Plaintiffs and Class members, within the 10-day period as required by the UMSA. Instead, Amazon routinely holds funds in excess of the time allotted by the UMSA. Amazon’s conduct is an unfair or deceptive under RCW 19.86.020.

62. Amazon has further engaged in deceptive acts or practices by requiring Plaintiffs and Class members to be parties to the Participation Agreement, but failing to

1 disclose that the terms of the Participation Agreement violate the UMSA. Amazon does not  
2 ask Plaintiffs or Class Members to waive the provisions of the UMSA in the Participation  
3 Agreement.

4 63. Amazon's deceptive acts or practices have repeatedly occurred in its trade or  
5 business and were and are capable of deceiving a substantial portion of the public. The acts  
6 complained of herein are ongoing and/or have a substantial likelihood of being repeated.

7 64. Amazon's deceptive acts and practices affect the public interest. RCW  
8 19.230.005 provides, "It is the intent of the legislature to establish a state system of licensure  
9 and regulation to ensure the safe and sound operation of money transmission and currency  
10 exchange businesses, to ensure that these businesses are not used for criminal purposes, to  
11 promote confidence in the state's financial system, and to protect the public interest." Thus, the  
12 public has a strong interest in seeing that the provisions of Washington's UMSA are enforced.  
13 Further, the deceptive acts and practices were committed in the general course of Amazon's  
14 business and have already injured thousands of individuals nationwide. There is a likelihood  
15 that Amazon's practices will injure other members of the public.

16 65. As a direct and proximate result of Amazon's deceptive acts or practices,  
17 Plaintiffs and Class members suffered injury in fact and lost money. By failing to pay the  
18 Plaintiffs and the Class pursuant to the terms of UMSA and by requiring Plaintiffs and the  
19 Class to be parties to a contract of adhesion that violated UMSA, Amazon prevents Plaintiffs  
20 and the Class from timely accessing their funds.

21 66. Plaintiffs and the Class are therefore entitled to legal relief against Amazon,  
22 including recovery of actual damages, treble damages, attorneys' fees, costs of suit, and such  
23 further relief as the Court may deem proper.

24 67. Plaintiffs and the Class are also entitled to injunctive relief in the form of an  
25 order prohibiting Amazon from engaging in the alleged misconduct and such other equitable  
26 relief as the Court deems appropriate, including, but not limited to, disgorgement, for the  
27

benefit of the Class members, of all or part of the ill-gotten profits Amazon received from delayed transmission of the funds.

#### FOURTH CLAIM FOR RELIEF

##### **(Violation of the Washington Consumer Protection Act, RCW § 19.86 *et seq.* – Non-Per Se Unfair Business Practices – On Behalf of the Class and the Subclass)**

68. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

69. Amazon is a “person” within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(1), and conducts “trade” and “commerce” within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(2).

70. Plaintiffs and other Class members are “persons” within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(1).

71. Amazon engaged in unfair acts or practices by engaging in a pattern and practice of failing to transfer Plaintiffs’ and Class members’ funds within the 10-day period required by the UMSA.

72. Amazon’s systematic practice of failing to timely transfer Plaintiffs’ and Class members’ money and failing to disclose the UMSA’s requirements in Amazon’s Participation Agreement are unfair because these acts or practices offend public policy as it has been established by statutes, regulations, the common law or otherwise, including, but not limited to, the public policy established by RCW 19.230.005.

73. Amazon’s systematic practice of failing to timely transfer Plaintiffs’ and Class members’ money and failing to disclose the UMSA’s requirements in Amazon’s Participation Agreement are unfair because these acts or practices: (1) cause substantial financial injury to Plaintiffs and Class members; (2) are not outweighed by any countervailing benefits to consumers or competitors; and (3) are not reasonably avoidable by consumers.

74. Amazon’s systematic practice of failing to timely transfer Plaintiffs’ and Class members’ money and failing to disclose the UMSA’s requirements in Amazon’s Participation

1 Agreement are unfair because these acts or practices are immoral, unethical, oppressive and/or  
2 unscrupulous.

3 75. Amazon's unfair acts and practices affect the public interest. RCW 19.230.005  
4 provides, "It is the intent of the legislature to establish a state system of licensure and  
5 regulation to ensure the safe and sound operation of money transmission and currency  
6 exchange businesses, to ensure that these businesses are not used for criminal purposes, to  
7 promote confidence in the state's financial system, and to protect the public interest." Thus, the  
8 public has a strong interest in seeing that the provisions of Washington's UMSA are enforced.  
9 Further, the unfair acts and practices were committed in the general course of Amazon's  
10 business and have already injured thousands of individuals nationwide. There is a likelihood  
11 that Amazon's practices will injure other members of the public.

12 76. As a direct and proximate result of Amazon's unfair acts or practices, Plaintiffs  
13 and Class members suffered injury in fact and lost money. By failing to pay the Plaintiffs and  
14 the Class pursuant to the terms of UMSA and by requiring Plaintiffs and the Class to be a party  
15 to a contract of adhesion that violated UMSA, Amazon prevents Plaintiffs and the Class from  
16 timely accessing their funds.

17 77. Plaintiffs and the Class members are therefore entitled to legal relief against  
18 Amazon, including recovery of actual damages, treble damages, attorneys' fees, costs of suit,  
19 and such further relief as the Court may deem proper.

20 78. Plaintiffs and the Class are also entitled to injunctive relief in the form of an  
21 order prohibiting Amazon from engaging in the alleged misconduct and such other equitable  
22 relief as the Court deems appropriate, including, but not limited to, disgorgement, for the  
23 benefit of the Class members, of all or part of the ill-gotten profits Amazon received from  
24 delayed transmission of the funds.

## FIFTH CLAIM FOR RELIEF

### **(Breach of Contract – On Behalf of the Subclass)**

79. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

80. In the Participation Agreement, Amazon claims to have the right to withhold payments that are due and owing for the shorter of:

- a. A period of 90 days following the initial date of suspension; or
- b. Completion of any investigation(s) regarding any Seller actions and/or performance in connection with this Participation Agreement.<sup>12</sup>

81. Even assuming that Amazon validly has the right to hold the funds for this length of time (in direct contravention of the requirements of the UMSA), Amazon routinely breaches its contractual obligation by holding funds in excess of the “shorter of” (a) or (b).

82. Upon information and belief, the Subclass has suffered the same breach of contract. By way of example:

- a. Plaintiff Peters, for example, had several hundred dollars held for 98 days; and
- b. Plaintiff Lane, for example, had several hundred dollars held more than 100 days.

83. There is no legitimate basis for Amazon to withhold the funds. Amazon has not attempted to justify its conduct; rather, to date, Amazon has simply ignored each of Plaintiffs’ entreaties for information regarding payment.

84. As a result of such breaches of the Participation Agreement, Plaintiffs and the Subclass have been deprived of their funds.

85. Plaintiffs, on behalf of themselves and the Class, have notified Amazon of the breach within a reasonable time.

---

<sup>12</sup> See Amazon Participation Agreement at ¶ 5(h).

87. Plaintiffs and the Subclass are entitled to legal and equitable relief against Amazon, including damages, specific performance, accounting, rescission, attorneys' fees, costs of suit, and other relief as appropriate.

## SIXTH CLAIM FOR RELIEF

**(Breach of Fiduciary Duty – On Behalf of the Subclass)**

88. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

89. Under the terms of the Participation Agreement, Amazon is the agent for payment for Plaintiffs and the Subclass. As an agent, Amazon owes a fiduciary duty to Plaintiffs and the Subclass. Amazon acknowledges the existence of this special relationship in the Participation Agreement's discussion of payment processing:

You hereby appoint us as your payment processing agent for the limited purpose of receiving Payment Transaction funds on your behalf. ***Except as provided in the preceding sentence, Amazon is not the agent, fiduciary,*** trustee, or other representative of you.<sup>13</sup>

• • •

Because Amazon is not the agent of Seller *except for the limited purpose of processing payments* and is not the agent of Buyer for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.<sup>14</sup>

90. In the Participation Agreement, Amazon claims to have the right to withhold payments that are due and owing for the shorter of:

a. A period of 90 days following the initial date of suspension; or

<sup>13</sup> See Amazon Participation Agreement at ¶ 22(b) (emphasis added).

<sup>14</sup> See Amazon Participation Agreement at ¶ 19 (emphasis added).

b. Completion of any investigation(s) regarding any Seller actions and/or performance in connection with this Participation Agreement.<sup>15</sup>

91. Even assuming that Amazon validly has the right to hold the funds for this length of time (in direct contravention of the requirements of the UMSA), Amazon routinely breaches its contractual obligation by holding funds in excess of the “shorter of” (a) or (b).

92. Upon information and belief, the Subclass has suffered the same breach of fiduciary duty. For example:

a. Plaintiff Peters had several hundred dollars held for 98 days; and

b. Plaintiff Lane, for example, had several hundred dollars held more than 100 days.

93. To date, Amazon has simply ignored each of Plaintiffs’ entreaties for information regarding payment.

94. Even assuming that Amazon validly has the right to hold the funds for this length of time (in direct contravention of the requirements of the UMSA), Amazon routinely breaches its fiduciary duty by holding funds in excess of Amazon routinely breaches its contractual obligation by holding funds in excess of the “shorter of” (a) or (b). Upon information and belief, the Class has suffered the same breach of fiduciary duty.

95. As a result of such breaches, Plaintiffs and the Subclass have been deprived of their funds.

96. Plaintiffs, on behalf of themselves and the Subclass, have notified Amazon of the breach within a reasonable time.

97. Plaintiffs and the Subclass have been and continue to be damaged by Amazon’s breach of fiduciary duty, and have suffered damages in an amount to be determined at trial. Plaintiffs and the Subclass are entitled to damages.

<sup>15</sup> See Amazon Participation Agreement at ¶ 5(h).

1           98.     Plaintiffs and the Subclass are entitled to legal and equitable relief against  
 2 Amazon, including damages, specific performance, an accounting, rescission, attorneys' fees,  
 3 costs of suit, and other relief as appropriate.

#### 4                                   **SEVENTH CLAIM FOR RELIEF**

##### 5                           **(Declaratory Relief – On Behalf of the Class and Subclass)**

6           99.     Plaintiffs reallege and incorporate by reference the allegations set forth in each  
 7 of the preceding paragraphs of this Complaint.

8           100.    Plaintiffs seek a declaration of the parties' rights and duties under Amazon's  
 9 Participation Agreement.

10          101.    The Participation Agreement is a contract of adhesion, drafted by Amazon and  
 11 presented in its entirety to Plaintiffs and the other persons who comprise the proposed Class  
 12 and Subclass. Amazon is a large corporation and Plaintiffs are individuals or small companies.  
 13 Plaintiffs and members of the proposed Class and Subclass do not possess the economic power  
 14 equal to that of Amazon. The Participation Agreement should be liberally construed in favor of  
 15 Plaintiffs and the Class and Subclass and any ambiguities resolved against Amazon.

16          102.    An actual controversy has arisen and now exists between Amazon and Plaintiffs  
 17 and the Class and Subclass they propose to represent in this action regarding the length of time  
 18 that funds can be held by Amazon. Accordingly, Plaintiffs hereby request a judicial declaration  
 19 of the rights and duties of the parties with respect to Amazon's payment of funds.

#### 20                                   **EIGHTH CLAIM FOR RELIEF**

##### 21                           **(Unjust Enrichment – On Behalf of the Class and Subclass)**

22          103.    Plaintiffs reallege and incorporate by reference the allegations set forth in each  
 23 of the preceding paragraphs of this Complaint.

24          104.    To the detriment of Plaintiffs and members of the Class and Subclass, Amazon  
 25 has been, and continues to be, unjustly enriched as a result of the unlawful and/or wrongful  
 26 refusal to pay funds to Plaintiffs and the Class and Subclass on a timely basis. Amazon  
 27



continues to earn interest and receives other benefits from Plaintiffs' and the Class' and Subclass' funds that have been wrongfully withheld.

105. As between the parties, it would be unjust for Amazon to retain the benefits attained by its actions. Accordingly, Plaintiffs and members of the Class and Subclass seek a full accounting and restitution of Amazon's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief pursuant to each cause of action set forth in this complaint as follows:

A. Certification of the action as a class action with respect to Plaintiffs' claims for injunctive relief and claims for damages, and appointment of Plaintiffs as Class Representatives and their counsel of record as Class Counsel;

B. A judicial declaration that Amazon's transmission of funds pursuant to the Participation Agreement's Payment Services must comport with the UMSA;

C. An award of equitable relief as follows: (i) enjoining Amazon from transmitting payments in a manner that violates the UMSA, (ii) requiring Amazon to make full restitution of all monies wrongfully obtained as a result of the conduct described in this complaint, (iii) requiring Amazon to account for and disgorge all ill-gotten gains flowing from the conduct described in this complaint, (iv) imposing a constructive trust on all monies wrongfully withheld, (v) requiring Amazon to provide public notice of the true nature and scope of the UMSA, and (vi) requiring Amazon to modify its Participation Agreement, and payment practices to comport with the provisions of the UMSA.

D. An award of actual damages, statutory damages, exemplary or treble damages, and such other relief as provided by the statutes cited herein;

E. An award of attorney fees;

F. An award of costs;

1 G. Pre- and post-judgment interest on any amounts awarded; and

2 H. Such other relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby request a jury trial.

5 RESPECTFULLY SUBMITTED AND DATED this 23rd day of April, 2013.

6 TERRELL MARSHALL DAUDT & WILLIE PLLC

7  
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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on April 23, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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*Attorneys for Defendant*

DATED this 23rd day of April, 2013.

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- [Changes to the Participation Agreement](#)
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- [Selling Policies](#)
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## Participation Agreement

Welcome to the Amazon.com site (the "Site") and our selling services (the "Services"). Any person who wants to access the Site and use the Services to sell items must accept the terms and conditions of this Participation Agreement without change. BY REGISTERING FOR AND USING THE SERVICES, YOU AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS PARTICIPATION AGREEMENT, AND ALL POLICIES AND GUIDELINES OF THE SITE ARE INCORPORATED BY REFERENCE.

Amazon Services LLC ("Amazon") reserves the right to change any of the terms and conditions contained in this Participation Agreement or any policies or guidelines governing the Site or Services, at any time and in its sole discretion. Any changes will be effective upon posting of the revisions on the Site. All notice of changes to this Participation Agreement will be posted on the Site for thirty (30) days. You are responsible for reviewing the notice and any applicable changes. Changes to referenced policies and guidelines may be posted without notice to you. YOUR CONTINUED USE OF THIS SITE AND THE SERVICES FOLLOWING AMAZON'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. IF YOU DO NOT AGREE TO ANY CHANGES TO THIS PARTICIPATION AGREEMENT, DO NOT CONTINUE TO USE THE SERVICES OR THIS SITE.

**1. Eligibility.** Use of the Site and Services is limited to parties that lawfully can enter into and form contracts under applicable law. For example, minors are not allowed to use the Services. To register, you must provide your real name, address, phone number, e-mail address, and valid credit card information. You represent and warrant that: (a) if you are a business, you are duly organized, validly existing and in good standing under the laws of the country in which your business is registered and that you are registering for the Services within such country; and (b) you have all requisite right, power and authority to enter into this Participation Agreement and perform your obligations hereunder.

**2. Sellers' Listing Fees and Payment Terms.** Please review the Fee Schedule and Payment Terms contained in the Help section for Marketplace listing fees. All listing fees are in U.S. dollars unless stated otherwise and are incorporated herein by reference. The Fee Schedule and Payment Terms may vary in the future. The Fee Schedule and Payment Terms in effect on the date of sale of the item shall govern the transaction. You should check the fees and terms each time you participate. All fees, including but not limited to subscription plan fees, are payable upon demand on a Visa, MasterCard, American Express, Discover, JCB, or Diners Club credit card. By listing an item for sale on the Site, you authorize Amazon to charge your credit card for amounts due.

**3. Applicable Policies and Guidelines.** You agree to abide by the procedures and guidelines--contained in the Help section--for conducting fixed price sales, which are incorporated by reference into, and made part of, this Participation Agreement. The procedures and guidelines contained in the Help section explain the processes and set out acceptable conduct and prohibited practices. We may change these procedures and guidelines in the future, and such changes will be effective immediately upon posting without notice to you. You should refer regularly to the Help section to understand the current procedures and guidelines for participating and to be sure that the items you offer for sale can be sold on the Site. For each item you list on the Site, you will provide to us the state or country from which the item ships. You will provide to us (using the processes and timing that we designate) any requested information regarding shipment, tracking (to the extent available) and order status, and we may make any of this information publicly available. You will not send customers emails concerning shipping confirmation of products you sell (except that to the extent we have not yet enabled functionality for your account that allows payment to be processed on the basis of when shipment occurs, then you will send customers emails confirming shipment of products you sell in a format and

## Seller Support

Please use the e-mail address associated with your Amazon.com Seller account.

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- [Ayuda en Español](#)

manner reasonably acceptable to us). Promptly after shipment of a customer's order (or any portion of the customer's order), you will accurately inform us that the order has been shipped (and, in the case of a customer order that is shipped in more than one shipment, accurately inform us which portion of the order has been shipped), using our standard functionality for communicating such information when we make that functionality available to you ("Confirmation of Shipment"). If you fail to provide Confirmation of Shipment within the time frame specified by us (e.g., 30 days after the date an order was placed), we may in our sole discretion cancel (and/or direct you to stop and/or cancel) any such transaction, and you will stop and/or cancel any such transaction upon such request by us. You will comply with any instructions from the manufacturer, distributor and/or licensor of a product regarding Street Date for Delivery (which means the date, if any, specified by the manufacturer, distributor and/or licensor of a product as the date before which such product should not be delivered or otherwise made available to customers) or the Street Date for Disclosure (which means the date, if any, specified by the manufacturer, distributor and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly).

**4. Amazon's Role.** Amazon provides a platform for third-party sellers ("Sellers") and buyers ("Buyers") to negotiate and complete transactions. Amazon is not involved in the actual transaction between Sellers and Buyers and is not the agent of Sellers except for the limited purpose of processing payments and has no agency authority for any other purpose, and Amazon is not the agent of Buyers for any purpose. As a Seller, you may list any item on the Site unless it is a prohibited item as defined in the procedures and guidelines contained in the Help section, or otherwise prohibited by law. Without limitation, you may not list any item or link or post any related material that (a) infringes any third-party intellectual property rights (including copyright, trademark, patent, and trade secrets) or other proprietary rights (including rights of publicity or privacy); (b) constitutes libel or slander or is otherwise defamatory; or (c) is counterfeited, illegal, stolen, or fraudulent. It is up to the Seller to accurately describe the item for sale. As a Seller, you use the Site and the Services at your own risk.

**5. The Amazon Payment Service.** IN ORDER TO SELL ITEMS IN MARKETPLACE, YOU MUST REGISTER WITH AMAZON AND USE THE AMAZON PAYMENT SERVICE (the "Payment Service").

a. The Payment Service facilitates the purchase of Seller items listed on the Site. A Buyer's authorized credit card payment ("Payment Transaction") is credited to a registered Seller's Account Summary, and funds are periodically transferred to the Seller's designated checking account ("Seller's Account"). Alternatively, eligible Sellers may opt to purchase an Amazon.com gift certificate with funds from a Payment Transaction to the extent that Amazon offers such an option. The Buyer may authorize a Payment Transaction with any major credit card accepted by Amazon. Receipt of Payment Transaction funds by us on a Seller's behalf will be deemed receipt of funds by Seller and will satisfy the obligations owed to Seller by the Buyer in the amount of the applicable Payment Transaction. Upon completion of a Payment Transaction a receipt indicating that payment has been made will be furnished to the Buyer. Our obligation to remit funds collected by us on your behalf will be limited to funds that we have actually received and that are not subject to chargeback or reversal. The Payment Service helps facilitate Marketplace transactions and is not the purchaser of the Seller's goods. Seller will resolve any dispute directly with Buyer or with the assistance of the Amazon.com A-to-z Guarantee and not through the Payment Service. Seller must register online with Amazon to use the Payment Service. You must provide us true and accurate information when registering and must maintain and update that information as applicable. Seller will not impersonate any person or use a name he or she is not legally authorized to use. Seller authorizes us to verify his or her information (including any updated information), to obtain credit reports about Seller in order to approve Seller for use of the Payment Service and also from time to time while Seller is registered with the Payment Service (including credit reports about Seller's spouse if Seller lives in a community property state), and to obtain an initial credit authorization from Seller's credit card issuer at time of registration.

b. The Payment Service is available only to individuals and others who meet the terms of eligibility for the Amazon online selling community, who have been issued a credit card acceptable by Amazon, and whose



applications are acceptable to Amazon. Payment Transactions can be credited only to bank checking accounts in the United States or any other country shown as supported by our standard functionality and enabled for your account (which functionality may be modified or discontinued by us at any time without notice), or used to purchase Amazon.com gift certificates (to the extent permitted by Amazon), which purchases are subject to Amazon's Terms and Conditions for Gift Certificates. Sellers may also use the checking account provided to Amazon for the Payment Service when making retail purchases on the Amazon.com web site, subject to Amazon's **Terms and Conditions for Payments from a Bank Account**. Sellers waive any rights with respect to the Payment Service when shipping to an address other than that provided by the Payment Service.

c. The Payment Service is generally available seven (7) days per week, twenty-four (24) hours per day, except for scheduled downtime due to system maintenance. We can initiate Payment Transaction credits to Seller's Account only on a Business Day when the automated clearinghouses are open for business. For purposes of this Participation Agreement, a Business Day is a Monday through Friday, excluding federal banking holidays. We will inform you of each completed transaction using our standard procedures. In addition, you can access your Payment Service transaction information online in your Seller Account. You may access the Seller's Transactions feature only with a browser that is compatible with the Payment Service, including any security features that are a part of the Payment Service.

d. You may provide refunds or adjustments to Buyers for their Marketplace purchases through the Payment Service using functionality we enable for your account. This functionality may be modified or discontinued by us at any time without notice and is subject to the limitations in the Help section and the terms of this Participation Agreement. You may not create invoices for Marketplace sales.

e. All balances for a given 14-day period will be reflected in the Seller's Account Summary. We will initiate a credit to Seller's Account on a rolling 14-day cycle ("Payment Date") based on the original date of Seller's registration with the Payment Service or on the next Business Day if the scheduled Payment Date falls on a non-Business Day. If Seller requests a change to the scheduled Payment Date, the 14-day cycle will be reset to the requested Payment Date. When you either initially provide or later change your bank account information, you must wait 7 days to either (1) request a transfer to Seller's Account or (2) purchase an Amazon.com gift certificate within the 14-day cycle. After 7 days, you may either request transfers to Seller's Account or purchase an Amazon.com gift certificate (if available) at any time within the 7-day cycle via the Seller's Account Summary page. We will initiate a transfer to Seller's Account on each Payment Date and, based on your preferences, either (1) initiate a transfer to Seller's Account or (2) initiate your purchase of an Amazon.com gift certificate (if available), in either case for the total amount of Payment Transactions you received from Buyer's authorized credit card transactions, less any refunds, adjustments, or other amounts paid to Buyers in connection with Marketplace purchases, or for funds you otherwise received since the last Payment Date. The amount of the fees for Payment Transactions will be posted to Seller's Account Summary and will be deducted from the balance of credits in the Seller's Account Summary to be remitted to you on the next Payment Date. When a Seller purchases an Amazon.com gift certificate (if available), funds for Payment Transactions will be posted to the balance in the Seller's gift certificate account on the Site (the "GC Account").

f. Transfers to the Seller's Account will generally be credited within five Business Days of the date we initiate the transfer. On occasion, we may send Seller a paper check instead of an electronic credit to Seller's bank account. We will do so, for instance, if Seller's bank will not accept an electronic credit to Seller's Account.

g. As a security measure, we may, but are not required to, impose transaction limits on some or all Buyers and Sellers relating to the value of any transaction, disbursement, or adjustment, the cumulative value of all

transactions, disbursements, or adjustments during a period of time, or the number of transactions per day or other period of time. We will not be liable to Seller: (i) if we do not proceed with a transaction, disbursement, or adjustment that would exceed any limit established by us for a security reason, or (ii) if we permit a Buyer to withdraw from a transaction because the Payment Service is unavailable following the commencement of a transaction.

h. If we reasonably conclude based on information available to us that Seller's actions and/or performance in connection with the Services may result in Buyer disputes, chargebacks or other claims, then we may, in our sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to you in connection with the Services or this Participation Agreement for the shorter of: (a) a period of 90 days following the initial date of suspension; or (b) completion of any investigation (s) regarding any Seller actions and/or performance in connection with this Participation Agreement. We will not be liable to Seller if we act in accordance with the provisions of this Section.

i. All notices will be sent by e-mail or will be posted on the Site or by any other means then specified by Amazon. We will send notices to Seller at the e-mail address maintained in Amazon's records for Seller. Seller will monitor his or her e-mail messages frequently to ensure awareness of any notices sent by us. Seller will send notices to us using the functionality for contacting Amazon provided in our Help pages.

j. There is no fee for registering for the Payment Service. The fees for using the Payment Service in Marketplace listings are included in the Marketplace listing fees (which means there are no additional fees for use of the Payment Service). We may, in our sole discretion, waive, reduce, or reverse charges or fees for a specific transaction.

k. We may refuse service to anyone for any reason. We may earn interest or other compensation from the balances in our bank accounts that result from the timing difference between our being paid by Buyer and our bank account being debited to pay Payment Transaction credits to Seller. We will bear the risk of credit card fraud (i.e. fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Payment Transactions, and Seller will bear all other risk of fraud or loss; provided, that we will not bear the risk of credit card fraud in connection with any of Seller's products (except those products, if any, that are fulfilled using the Fulfillment by Amazon service) that are not fulfilled strictly in accordance with the order information and shipping information that we provide you. We reserve the right to seek reimbursement from Seller if we, in our sole discretion, decide to reimburse Buyer under the terms of the Amazon.com A-to-Z Guarantee, provide a refund to Buyer if Seller cannot promptly deliver the goods, discover erroneous or duplicate transactions, or receive a chargeback from Buyer's credit card issuer for the amount of Buyer's purchase from Seller. We may obtain reimbursement of any amounts owed by Seller to Amazon by deducting from future payments owed to Seller, reversing any credits to Seller's Account, charging against gift certificates held in Seller's GC Account (if any) that were purchased with Payment Transaction funds, charging Seller's credit card, or seeking such reimbursement from Seller by any other lawful means. You authorize us to use any or all of the foregoing methods to seek reimbursement, including the debiting of your credit card or checking account.

l. Seller may terminate his or her participation in the Payment Service at any time by informing us using the standard method then-currently provided by Amazon for such termination, and we may terminate Seller's participation in the Payment Service at any time without notice to Seller. Upon termination, Seller must pay us whatever fees were incurred prior to the effective date of the termination. Also upon termination, any pending transactions will be canceled.

m. We reserve the right, upon termination, to set off against any payments to be made to Seller, an amount determined by us to be adequate to cover



chargebacks, refunds, adjustments or other amounts paid to Buyers in connection with Marketplace purchases from Seller's Account or GC Account for a prospective three-month period. At the end of such three-month period following termination, we will disburse to Seller any amount not used to offset chargebacks, refunds, adjustments, or such other amounts paid to Buyers, or seek reimbursement from Seller via any of the means authorized in Section 5.k. above for any additional amount required to offset chargebacks, refunds, adjustments, or other amounts paid to Buyers, as applicable.

**6. Amazon Reservation of Rights.** Amazon retains the right to determine the content, appearance, design, functionality and all other aspects of the Site and the Services (including the right to re-design, modify, remove and alter the content, appearance, design, functionality, and other aspects of the Site and the Service and any element, aspect, portion or feature thereof, from time to time), and to delay or suspend listing of, or to refuse to list, or to de-list, or to require Seller not to list, any or all products in our sole discretion. We may in our sole discretion withhold for investigation, refuse to process, restrict shipping destinations for, stop and/or cancel any of your transactions. You will stop and/or cancel orders of your products if we ask you to do so (provided that if you have transferred your products to the applicable carrier or shipper, you will use commercially reasonable efforts to stop and/or cancel delivery by such carrier or shipper). You will refund any customer (in accordance with this Participation Agreement) that has been charged for an order that we stop or cancel.

**7. Amazon Participation.** Employees of Amazon and its affiliates are permitted to participate in their personal capacity (i.e., not as Amazon employees, representatives, or agents of Amazon or its affiliates) in the transactions conducted through this Site (unless they have confidential information about a particular item). Employees of Amazon and its affiliates, when participating in any transaction in their personal capacity, are subject to this Participation Agreement and the same procedures and guidelines contained in the Help section as any Buyer or Seller on this Site.

#### **8. Your Transactions**

a. For sales where a Seller lists goods at a fixed price ("fixed price sales"), the Seller is obligated to sell the goods at the listed price to Buyers who meet the Seller's terms. By listing an item in a fixed price sale, you represent and warrant to prospective Buyers that you have the right and ability to sell, and that the listing is accurate, current, and complete and is not misleading or otherwise deceptive.

b. For fixed price sales, Seller will determine the purchase price for each item he or she lists on the Site via and subject to Amazon.com's standard functionality for listing the purchase price, provided that Seller must abide by the same procedures and guidelines contained in the Help section with respect to pricing.

**9. Your Obligation.** By entering into this Participation Agreement and posting a listing for fixed price sale, you agree to complete the transaction as described by this Participation Agreement. You acknowledge that by not fulfilling these obligations, your action or inaction may be legally actionable.

**10. Seller Taxes.** You agree that it is the Seller's responsibility to determine whether Seller Taxes apply to the transactions and to collect, report, and remit the correct Seller Taxes to the appropriate tax authority, and that Amazon is not obligated to determine whether Seller Taxes apply and is not responsible to collect, report, or remit any sales, use, or similar taxes arising from any transaction, except to the extent Amazon expressly agrees to collect taxes or other transaction-based charges in connection with a collection service made available by Amazon and used by Seller. "Seller Taxes" means any and all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred or required to be collected or paid for any reason in connection with any advertisement, offer or sale of products by you on or through the Site, or otherwise in connection with any action, inaction or omission of you or any of affiliate of yours, or any of your or their respective employees, agents, contractors or representatives.

**11. Returns and Refunds.** Subject to Section 5.d., for all of your products that are not fulfilled using the Fulfillment by Amazon service, you will accept and process returns,

refunds and adjustments in accordance with this Participation Agreement and the Amazon return policies published on the Site at the time of the applicable order, and we may inform customers that these policies apply to your products. Subject to section 5.d., you will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid by you to Buyers in connection with Marketplace purchases, using functionality we enable for your account, and will route all such payments through Amazon. We will provide any such payments to the Buyers (which may be in the same payment form originally used to purchase your product), and you will reimburse us for all amounts so paid. We may offset such payments against any amounts to be remitted or paid by Amazon to Seller under this Agreement or seek reimbursement from Seller via any of the means authorized in Section 5.k. For all of your products that are fulfilled using the Fulfillment by Amazon service, the Amazon return policies published on the Site at the time of the applicable order will apply and you will comply with them. You will promptly provide refunds and adjustments that you are obligated to provide under the applicable Amazon return policies and as required by law, and in no case later than thirty (30) days after the obligation arises.

**12. Password Security.** Your password may be used only to access the Site, use the Services, electronically sign your transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account) and are solely responsible for any use of or action taken under your password on this Site. If your password is compromised, you must change your password.

**13. Illegal Activity**

**a. Compliance with Laws; Fraud.** The Site and Services may be used only for lawful purposes and in a lawful manner. You agree to comply with all applicable laws, statutes, and regulations. You may not register under a false name or use an invalid or unauthorized credit card. You may not impersonate any participant or use another participant's password(s). Such fraudulent conduct is a violation of federal and state laws. Fraudulent conduct may be reported to law enforcement, and Amazon will cooperate to ensure that violators are prosecuted to the fullest extent of the law.

**b. Investigation.** Amazon has the right, but not the obligation, to monitor any activity and content associated with this Site and investigate as we deem appropriate. Amazon also may investigate any reported violation of its policies or complaints and take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, suspension or termination of service, denying access, and/or removal of any materials on the Site, including listings. Amazon reserves the right and has absolute discretion to remove, screen, or edit any content that violates these provisions or is otherwise objectionable.

**c. Disclosure of Information.** Amazon also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other third parties. In order to cooperate with governmental requests, to protect Amazon's systems and customers, or to ensure the integrity and operation of Amazon's business and systems, Amazon may access and disclose any information it considers necessary or appropriate, including but not limited to user contact details, IP addressing and traffic information, usage history, and posted content.

**14. Privacy; Use of Amazon Transaction Information.**

**a. Read the Amazon.com Privacy Notice.** The Privacy Notice may be changed by us in the future. You should check the Privacy Notice frequently for changes. Amazon and its affiliates may communicate with you in connection with your listings, sales, and the Services, electronically and in other media, and you consent to such communications regardless of any "Customer Communication Preferences" (or similar preferences or requests) you may have indicated on the Site or by any other means. When you use the Services, some personally identifiable information about you, including your feedback and the e-mail address associated with your account, may be displayed on the Site and may be viewed by potential buyers.

b. You will not, and will cause your affiliates not to, directly or indirectly disclose, convey or use any order information or other data or information acquired by you or your affiliates from Amazon or its affiliates (or otherwise) as a result of the Participation Agreement, the transactions contemplated hereby or the parties' performance hereunder (collectively, "**Amazon Transaction Information**"), except you may disclose this information as necessary for you to perform your obligations under this Participation Agreement, provided that you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information. The terms of this Section 14(b) do not prevent you from using other information that you obtain separately from the Amazon Transaction Information, even if such information is identical to Amazon Transaction Information, provided that you do not target communications on the basis of the intended recipient being an Amazon.com user.

**15. No Warranties.** THE SITE AND THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. AMAZON MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION:

- a. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT;
- b. THAT THE SITE OR THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, OR OPERATE WITHOUT ERROR;
- c. THAT THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED ON THE SITE WILL BE AS REPRESENTED BY SELLERS, AVAILABLE FOR SALE AT THE TIME OF FIXED PRICE SALE, LAWFUL TO SELL, OR THAT SELLERS OR BUYERS WILL PERFORM AS PROMISED;
- d. ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE; AND
- e. ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF AMAZON. TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AMAZON DISCLAIMS ANY AND ALL SUCH WARRANTIES.

**16. General Release.** BECAUSE AMAZON IS NOT INVOLVED IN TRANSACTIONS BETWEEN BUYERS AND SELLERS OR OTHER PARTICIPANT DEALINGS, IF A DISPUTE ARISES BETWEEN ONE OR MORE PARTICIPANTS, EACH OF YOU RELEASE AMAZON (AND ITS AGENTS AND EMPLOYEES) FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

**17. Indemnity/Limitation of Liability.**

a. **Indemnity and Defense.** You will defend, indemnify and hold harmless Amazon and its affiliates (and their respective employees, directors, agents and representatives) from and against any and all claims, costs, losses, damages, judgments, penalties, interest and expenses (including reasonable attorneys' fees) arising out of any Claim that arises out of or relates to: (i) any actual or alleged breach of your representations, warranties, or obligations set forth in this Participation Agreement; or (ii) your own website or other sales channels, the products you sell, any content you provide, the advertisement, offer, sale or return of any products you sell, any actual or alleged infringement of any intellectual property or proprietary rights by any products you sell or content you provide, or Seller Taxes or the collection, payment or failure to collect or pay Seller Taxes. For purposes hereof: "Claim" means any claim, action, audit, investigation, inquiry or other proceeding instituted by a person or entity.

b. **Limitation of Liability.** AMAZON WILL NOT BE LIABLE FOR ANY



DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PARTICIPATION AGREEMENT, THE SITE, THE SERVICES, THE INABILITY TO USE THE SERVICES, OR THOSE RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

**18. Applicable Law.** The laws of the state of Washington govern this Participation Agreement and all of its terms and conditions, without giving effect to any principles of conflicts of laws or the Convention on Contracts for the International Sale of Goods. Any dispute with Amazon or its affiliates relating in any way to these terms and conditions or your use of the Services in which the aggregate total claim for relief sought on behalf of one or more parties exceeds \$7,500 shall be adjudicated in any state or federal court in King County, Washington, and you consent to exclusive jurisdiction and venue in such courts.

**19. Disputes.** Because Amazon is not the agent of Seller except for the limited purpose of processing payments and is not the agent of Buyer for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction. Amazon urges Sellers and Buyers to cooperate with each other to resolve such disputes.

**20. Your Grant.** By entering into this Participation Agreement and listing an item, you grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of the content you submit to Amazon and its affiliates, and to sublicense the foregoing rights to our affiliates and operators of any website or other online point of presence (other than the Site) through which the Site and/or products or services available thereon are syndicated, offered, merchandised, advertised or described; provided, however, that we will not alter any of your trademarks (i.e., trademarks of yours that you provide to us in non-text form for branding purposes that are separate from and not embedded or otherwise incorporated in any product specific information or materials) from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of your trademarks (provided you are unable to do so using standard functionality made available to you via the Site or Services); provided further, however, that nothing in this Participation Agreement will prevent or impair our right to use without your consent the content and any other materials provided by you, to the extent that such use is allowable without a license from you or your affiliates under applicable law (e.g., fair use under copyright law, referential use under trademark law, or valid license from a third party). You represent and warrant that you own or otherwise control all of the rights to the content you submit to Amazon and its affiliates, and that the use of such materials by Amazon and its affiliates will not infringe upon or violate the rights of any third party.

**21. Termination.** Amazon, in its sole discretion, may terminate this Participation Agreement, access to the Site or the Services, or any current fixed price sales immediately without notice for any reason. Amazon, in its sole discretion, also may prohibit any Seller from listing items for fixed price sales.

## **22. General Provisions**

**a. Entire Agreement.** This Participation Agreement, including any terms and conditions incorporated herein by reference, and the general terms and conditions of the Site, including but not limited to the Privacy Notice and Conditions of Use, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes and cancels all prior and contemporaneous agreements, claims, representations, and understandings of the parties in connection with the subject matter hereof.

**b. No Agency; Third-Party Beneficiary.** You hereby appoint us as your payment processing agent for the limited purpose of receiving Payment Transaction funds on your behalf. Except as provided in the preceding sentence, Amazon is not the agent, fiduciary, trustee, or other representative of you. Nothing expressed or mentioned in or implied from this Participation Agreement is intended or shall be construed to give to any

person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Participation Agreement. This Participation Agreement and all of the representations, warranties, covenants, conditions, and provisions hereof are intended to be and are for the sole and exclusive benefit of Amazon, you, and relying Buyers or Sellers.

**c. Severability.** If any provision of this Participation Agreement shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and conditions and shall not affect the validity and enforceability of any remaining provisions.

**d. No Waiver.** We will not be considered to have waived any of our rights or remedies described in this Participation Agreement unless the waiver is in writing and signed by us. No delay or omission by us in exercising our rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. Amazon's failure to enforce the strict performance of any provision of this Participation Agreement will not constitute a waiver of Amazon's right to subsequently enforce such provision or any other provisions of this Participation Agreement.

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 Press Releases  
 Amazon and Our Planet  
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